

## **REMARKS**

### **I. Review of Prosecution History**

In view of the numerous filings subsequent to the Amendment filed July 16, 2008, Applicants feel a review of the prosecution of this application is in order. On July 16, 2008, more than a year prior to the filing of this paper, Applicants filed an Amendment in response to the Office Action mailed April 17, 2008. On November 5, 2008 a Notice of Non-Compliant Amendment was mailed stating that the abstract was not on a separate sheet, the location of the amendments to the specification were incorrect and that the amendment to claim 11 did not address the rejection set forth in the Office Action. On December 8, 2008, Applicants filed a response fully addressing each of the issues raised by the Examiner. On January 16, 2009 another Notice of Non-Compliant Amendment was mailed stating only that a complete listing of claims was missing. On February 13, 2009 Applicants filed another response containing a complete listing of claims which was identical to that filed on July 16, 2008 and to which no objection was made in the November 5, 2008 Notice of Non-Compliant Amendment. On May 21, 2009 a third Notice of Non-Compliant Amendment was mailed stating that claims 1 and 4-9 improperly show amendments and that the December 8, 2008 response did not submit the corrected specification section. Applicants note that no mention of this alleged deficiency was made in the February 13, 2009 Notice of Non-Compliant Amendment. On June 17, 2009 Applicants filed a response adding the missing portion of the corrected specification section and correcting the recitation of claims 1 and 4-9. On October 26, 2009 a fourth Notice of Non-Compliant Amendment was mailed stating now that the location of the amendments to pages 2 and 3 are inconsistent/incorrect and that the word "wherein" was deleted from claim 1 but not represented as such. In an effort to avoid further delay of the prosecution of this application, Applicants have submitted a complete and full Response and Amendment to the April 17, 2008 Office Action and to the subsequent Notices of Non-Compliant Amendment.

### **II. Status of the Claims**

Claims 1 and 4-12 are pending. Claim 1 has been amended to recite that the loop reduces the effective length of the withdrawal tape and can be released by pulling the free end

in order to increase the effective length of the withdrawal tape. Support can be found in original claim 1 and at least at page 3, lines 1-27. Claims 1 and 4-12 have been also amended to include the word “A” or “The” in an effort to address the Examiner’s objection based on “Line 1 of each claim is missing a word or words.” Claim 6 has been amended to recite that the loop is formed in the manner of a knot to form a second knot on the withdrawal tape. Support can be found in the specification at least at page 3, lines 29-34 and page 3, line 39 – page 4, line 5 and Figure 6. Claim 9 has been amended to recite that wherein the at least one fold of the withdrawal tape within the tampon body is releasable by pulling the free end of the withdrawal tape in order to increase the effective length of the withdrawal tape outside the tampon. Support can be found in original claim 9 and at least at page 7, lines 21-32. Claim 10 has been amended to recite that the tampon comprises a tampon body and a withdrawal tape. Support can be found in original claim 10. Claims 10-12 have been amended to replace “fibrous tampon web” with “fabric tampon band” in an effort to be consistent with the language used in the Specification. Support can be found in the Specification, at least at pages 6 and 7 and Figures 7 to 10 and original claims 10-12. Claim 11 has been amended to delete “is positioned” as suggested by the Examiner. The claims as amended are fully supported by the specification as originally filed. Accordingly, no new matter has been introduced by this amendment.

### **III. Notice of Non-Compliant Amendment of October 26, 2009**

In the Notice, the Examiner argues that the amendment is not compliant for the following reasons: (1) claim 1 improperly shows amendments; (2) the location of the amendments to pages 2 and 3 are inconsistent/incorrect; and (3) the claims section and remarks section are not on a separate sheet. Each of these objections are taken in turn below.

#### ***(1) Claim 1***

The Examiner argues that “claim 1 still improperly shows amendments, e.g. on line 4 the word ‘wherein’ has been deleted but such deletion was not properly shown and thereby the status identifier of such claim is now improperly set forth as “Previously Presented.” Applicants note that the word “wherein” was inadvertently omitted in the reproduction of claim 1. Claim 1 set forth in the Amendments to the Claims section should now be correct.

***(2) The location of the Amendments in Pages 2 and 3 of the Specification***

Applicants respectfully submit that the line numbering referred to in the previous amendment was correct. Applicants have checked the numbering with the specification available on PAIR and it appears to be correct. Nevertheless, in an effort to help the Examiner understand the Amendments, Applicants have deleted the reference to line numbering.

***(3) Claims and Remarks Sections***

The Listing of the Claims and the Remarks Sections are now on separate pages.

**IV. Objection to the Drawings**

The Examiner has objected to the drawings as failing to show the feature of claim 6, i.e., the loop in the manner of a Windsor knot. Applicants have amended claim 6 to recite that the loop is formed in the manner of a knot to form a second knot which is clearly shown in the drawings, e.g., Figure 6. Accordingly, Applicants request withdrawal of this objection.

The Examiner also objected to Figures 1-6 as not consistent with the description thereof bridging pages 4-5, “where the use shown.” Applicants have amended the specification to delete the words “and use.” Accordingly, Applicants request withdrawal of this objection.

**V. Objections to the Description**

The Examiner has objected to the Abstract for using implied terminology. Applicants have amended the Abstract to delete the phrases “according to the invention” and “comprises.” Additionally, the Examiner objected to the abstract because it allegedly was not on a separate sheet. Applicants note that the Examiner previously objected to the Abstract as a copy of the PCT Abstract which was on a separate page. Indeed, Applicants have confirmed through a copy of the Abstract available on PAIR that it is on a separate page. Nevertheless, Applicants have added the language “present on a separate page” in the preamble to the Amendment to the Abstract. It should be clear that the abstract is on a separate sheet. Accordingly, Applicants respectfully request that the objections to the Abstract be withdrawn.

The Examiner also objected to the disclosure for failing to provide subtitles of the various sections of the specification. Applicants have amended the specification to include the subtitles as required by the Examiner.

The Examiner also objected to the disclosure because Figures 1-6 are allegedly not consistent with the description thereof bridging pages 4-5, “where the use shown.” Applicants have amended the specification to delete the words “and use.” Accordingly, Applicants request withdrawal of these objections.

#### **VI. Claim Objections**

The Examiner objected to claims 1 and 4-12 because “Line 1 of each claim is missing a word or words.” Claims 1 and 4-12 have been amended to include the word “A” or “The” in an effort to address the Examiner’s objection. If these amendments do not address the rejection, Applicants respectfully request that the Examiner specifically state which words believed to be missing.

The Examiner also objected to claim 7 stating that “a” should be “the” and objected to claim 11 stating that “is positioned” should be deleted. Applicants have amended claim 7 and 11 as suggested by the Examiner. Accordingly, the objections should be withdrawn.

#### **VII. Claim Rejections – 35 U.S.C. §112**

The Examiner rejected claims 1, 4-6 and 9-12 as allegedly indefinite. Applicants respectfully submit that the claims previously presented were clear and definite. Nevertheless, in an effort to expedite prosecution, Applicants have amended the claims 1, 9, 10 and 11 in a manner that addresses the Examiner’s concerns. Therefore, Applicants request that the rejection be withdrawn.

#### **VIII. Claim Language Interpretation**

It is the Examiner’s position that the previously presented claims lacked clarity and therefore set forth an interpretation of the claims. As discussed above, Applicants respectfully traverse the Examiner’s objections and 35 U.S.C. § 112 rejections of the claims set forth in the previous Office Action. Nevertheless, in an effort to expedite prosecution,

Applicants have amended the claims to address the objections and rejections. Applicants believe that the amended claims do not lack clarity.

#### **IX. Claim Rejections – 35 U.S.C. §102**

*A. The Rejection of Claims 1 and 4-5 as anticipated by U.S. Patent No. 6,142,984 (“Brown”) As Evidenced By U.S. Patent No. 5,103,746 (“Dibben et al.”), U.S. Patent No. 2,357,750 (“McConnel”) and U.S. Patent No. 1,730,545 (“Van Dyke”).*

The Examiner has rejected claims 1 and 4-5 as allegedly anticipated by Brown as evidenced by Dibben et al., McConnel and Van Dyke. Applicants respectfully traverse this rejection.

As discussed in the present specification, the object of the invention is to specify a tampon, in particular for feminine hygiene, which allows a user to make a selection between a shorter withdrawal tape and a longer withdrawal tape. In particular, the invention relates to a tampon, in particular for feminine hygiene, comprising a tampon body and a withdrawal tape which is fastened on the tampon body and is configured such that the withdrawal tape has an effective length that can be changed before or during use. The withdrawal tape has a first end connected to the tampon body and a second end having a knot, a loop and a free end extending from the knot wherein the loop reduces the effective length of the withdrawal tape and can be released by pulling the free end in order to increase the effective length of the withdrawal tape. As also discussed in the specification, the withdrawal tape is configured such that its effective length can be changed preferably before use, but also during use.

Brown relates to a tampon including a pledget with a textured tampon string. The textured string is one or more of the following constructions: crocheted, cabled, braided or a combination of two or more thereof. Brown specifically teaches that the textured string remain in substantially continuous contact with one another along the entire extant or length of the tampon string. There is no teaching or suggestion in Brown of a string or withdrawal tape having a first end connected to the tampon body and a second end having a knot, a loop and a free end extending from the knot. Nor is there any teaching of a loop on the withdrawal tape that would be capable of reducing the effective length of the withdrawal tape and could be released by pulling the free end in order to increase the effective length of the withdrawal

tape. Indeed, there is no mention of any loop configuration on the withdrawal tape. Accordingly, Brown simply cannot anticipate the present claims.

The Examiner takes the position that “a crochet/lock stitch or loop has a lock/knot at its base from which the loop ends, i.e., the free ends, extend, and is releasable/may unravel from such lock/knot, e.g., by loosening/pulling the free ends, i.e., a slip knot/stitch” as evidenced by Dibben et al. and Van Dyke. The Examiner appears to take the position that because a crochet stitch has a loop that “may unravel” by pulling the ends, the crocheted string of Brown “includes the claimed structure as best understood.” Applicants respectfully disagree. As discussed above, Brown fails to teach or suggest a tampon withdrawal tape having a first end connected to the tampon body and a second end having a knot, a loop and a free end extending from the knot, much less, a loop configuration that reduces the effective length of the withdrawal tape and can be released by pulling the free end in order to increase the effective length of the withdrawal tape. There is no teaching or suggestion of a loop configuration, let alone a loop configuration that could be released. Indeed, Brown specifically teaches that the textured tampon string be constructed with a sufficiently, tight crochet. “Such a tight crochet means that all strand of the yarn remain in continuous contact with each other under normal conditions. This tighter contact provides a more stable and grippable string.” Further, Brown states that “loose contact or stitches have greater elasticity that will facilitate elongation or distortion of the tampon string. Such elongation or distortion causes difficulty for the user during tampon removal.” Clearly, loop configurations, certainly loop configurations that can be released, are not contemplated by Brown.

Apparently recognizing that Brown does not teach all of the claimed features, the Examiner relies upon Dibben et al. and Van Dyke. Applicants note that neither Dibben et al. nor Van Dyke relate to a tampon. In contrast, Dibben relates to a method of embroidery on a fabric and Van Dyke relates to a knitting needle. It appears that the Examiner is taking the position that Dibben et al. and Van Dyke disclose a knot with a loop. However, this appears to be irrelevant. First, Applicants note that the textured string taught by Brown is crocheted, cabled, braided or a combination thereof. Such textured configurations are different from embroidery. As discussed by Dibben embroidery is provides a decorative effect on the surface of a fabric. In contrast, as disclosed by Brown it is the string itself that is textured by crocheted, cabled, and/or braided. Further, even if the textured string taught by Brown is the

same as the embroidery disclosed by Dibben and/or Van Dyke, Brown fails to anticipate the present claims. As discussed above, there is no teaching in Brown of a tampon withdrawal tape having a knot, a loop and a free end, much less, a tampon withdrawal tape configured such that the withdrawal tape has an effective length that can be changed before or during use. In addition, neither Dibben et al. nor Van Dyke teach a configuration having a knot, a loop and a free end extending from the knot wherein the loop reduces the effective length and can be released by pulling the free end in order to increase the effective length. Accordingly, Applicants respectfully request that this rejection be withdrawn.

*B. The Rejection of Claims 7-9 and 11-12 as allegedly anticipated by U.S. Patent No. 3,818,912 ("Etz").*

Etz relates to a catamenial tampon having a recess at one end with the draw string wholly disposed within the recess. The Examiner relies upon 1 and 68 in Figures 14-17 as allegedly showing that the draw string has at least one releasable fold. Applicants note that there appears to be nothing in these Figures that indicate that the draw string has a fold. Rather, it is the wadding fleece 4 which is folded. Indeed, Etz specifically teaches that the draw string is wound around into a "flat spiral spool" seated in an annular recess formed by a hollow sleeve in the end of the rolled up pad. See col. 1, lines 60-64. Indeed, the description of Fig. 16 reads "shows the draw thread wound into a spool and pressed against the frontal end of the cotton wool roll." Accordingly, Etz fails to anticipate a tampon as recited in claims 7-9 or a method of producing a tampon as recited in claims 11-12 and the rejection should be withdrawn.

**X. Claim Rejections – 35 U.S.C. § 103**

*A. The Rejection of Claim 6 as unpatentable over Brown et al. as Evidenced by Dibben et al., McConnell, Van Dyke and U.S. Patent No. 4,682,419 ("Lynch")*

The Examiner has rejected claim 6 as allegedly unpatentable over Brown et al. as evidenced by Dibben et al., McConnell, Van Dyke and Lynch.

As amended, claim 6 relates to the tampon according to claim 1, wherein the loop is formed in the manner of a knot to form a second knot. Applicants respectfully traverse this

rejection for the reasons discussed above with respect to claims 1 and 4-5 and for the additional limitations present in claim 6. Lynch relates to a neck-tie tying gauge. The Examiner appears to be relying on Lynch specifically for teaching that a double knot will use more tie length than a single knot. The Examiner goes on to state that the use of double slip knots is “equivalent and interchangeable” for a single slip knot and would provide “a regularly textured surface.” Applicants respectfully request clarification of this rejection - where is it taught that a double slip knot is equivalent to a single slip knot? Indeed, the Examiner even states the differences between the two, the double knot “requires more length to form” and provides a “regularly textured surface.” See Office Action, page 9. Further, how is “regularly textured surface” provided by a knot? In any event, as discussed above, Brown fails to teach a tampon withdrawal tape comprising a knot, ergo, there is no knot to substitute for. Further, as discussed above, Brown fails to teach a tampon withdrawal tape having, in addition to a knot, a loop and a free end. Accordingly, Brown et al. taken alone or in combination with Dibben et al., McConnell, Van Dyke and Lynch, fails to render the present claims obvious.

*B. The Rejection of Claims 1 and 4-5 Over U.S. Patent No. 4,328,804 (“Shimatani” in View of U.S. Patent No. 2,091,018 (“Sivyer”).*

The Examiner has rejected claims 1 and 4-5 over Shimatani in view of Sivyer. Applicants respectfully traverse this rejection.

Shimatani relates to a hygienic tampon comprising a rope-shaped absorbent material coiled in parallel whirls or turn and compressed into the form of a bullet and a withdrawal string attached to the rear end of the bullet form material. The length of the withdrawal string is adjustable by the adjusting ring 3. The Examiner states that the adjuster appears to be a knot in the Figures. However, Shimatani specifically states that it is a ring. See col. 3, lines 1-4 and col. 4, lines 38-39. Clearly, a knot is not disclosed by Shimatani.

The Examiner relies upon Sivyer as disclosing a string length adjuster in a feminine hygiene article which is a knot from which a free end and loop extends and the loop is capable of complete diminishment. According to the Examiner it would have been obvious to substitute the string length adjuster of the Shimatani tampon with the string length adjuster



of Sivyer because two equivalents are interchangeable for the desired function. Applicants respectfully disagree.

First, the ring adjuster on the Shimatani tampon is not equivalent with the string length adjuster of the Sivyer garment. Shimatani uses a simple ring configuration while Sivyer uses a much more elaborate string length adjuster. Further, although Sivyer discloses that the garment can function as a sanitary belt there is no teaching or suggestion of a tampon. Indeed the function of the string length adjuster of Sivyer is to adjust the waist of the Sivyer garment. One of ordinary skill in the art would not expect that the string length adjuster for a garment would also be suitable for a tampon withdrawal tape (for obvious reasons). Accordingly, Shimatani taken alone or in combination with Sivyer fails to render the present claims obvious and the rejection should be withdrawn.

*C. The Rejection of Claim 6 as unpatentable over Shimatani in view of Sivyer as Evidenced by Lynch*

The Examiner has rejected claim 6 as allegedly unpatentable over Shimatani in view of Sivyer as evidenced by Lynch. Applicants respectfully traverse this rejection for the reasons set forth above with respect to claims 1 and 4-5 and for the additional limitations present in claim 6.

As amended, claim 6 relates to the tampon according to Claim 1, wherein the loop is formed in the manner of a knot to form a second knot on the withdrawal tape. The Examiner relies upon Shimatani as teaching that a tampon string length adjuster “can be of any type of adjuster and that a slip/slide knot can be a string length adjuster.” Applicants respectfully disagree. Shimatani does not teach that a slip/slide knot can be a string length adjuster. Indeed, as discussed above, Shimatani specifically teaches the use of a ring adjuster. Further, as discussed above, Sivyer fails to remedy the deficiencies of Shimatani. Accordingly, Shimatani fails to teach or suggest a withdrawal tape comprising a first end connected to a tampon body and a second end having a knot, a loop and a free end extending from the knot. Lynch, which is directed to a neck tying gauge, clearly fails to remedy this deficiency of Shimatani for the same reasons discussed above in paragraph VIII A. Accordingly, Applicants respectfully request that this rejection be withdrawn.

**XI. Conclusion**

Applicants respectfully request withdrawal of all outstanding objections and rejections. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/J&J5031USPCT/JPB. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account No. 10-0750/J&J5031USPCT/JPB.

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